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VIA ELECTRONIC FILING

Josh Minges, Hearing Examiner
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Shorthorn Solar, LLC, et al. v. Duke Energy Carolinas, LLC and Duke Energy
Progress, LLC
Docket No. 2017-281-E

Dear Josh:

On behalf of my clients, Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (the "Companies"), I am writing to raise an issue that relates to our pending motion to compel and the impending deadline for us to file our testimony on November 22nd. The complaint initiating this matter was filed on August 31, 2017. The Companies received the thirty-day notice from the Commission on September 15th. The complaint accused the Companies of refusing to comply with their obligations under PURPA by offering forecasted avoided cost rates and terms fixed over five years, which the Complainants allege are not providing them reasonable opportunities to obtain capital. The Complaint further alleged that the Companies are not acting in "good faith" in offering these PURPA terms. In order to prepare to defend our clients from these claims, we first served discovery 14 days later on September 29th, specifically focused on discovering information and receiving documents on the terms and conditions under which Complainants had financed and developed other solar projects. On October 20th, the Companies served a second set of discovery focused on the Complainants' support for certain unfounded allegations in the Complaint as well as specific aspects of Complainants' offers to sell power under PURPA. It is now November 10th and we have not received one answer to our interrogatories, nor have we received one document in response to our request for documents. In the meantime, the Companies have timely responded to discovery propounded by Complainants.

Yesterday we received testimony from the Complainants. As we expected, their testimony makes claims and assertions about their business practices that covers the very issues that we sought to explore with our discovery. Specifically, the testimony of the six solar developer witnesses make claims about the transactions they have entered and the manner in which they financed those



transactions. Our discovery asked for information and documents about those same transactions and how they were financed. Complainants' complete refusal to comply with their discovery obligations appears intended to deny the Companies any opportunity to test through discovery the precise allegations and assertions upon which Complainants base their claims – and to which they have now also pre-filed testimony.

Our immediate concern is that there will not be time for us to argue our motion to compel and receive discovery responses in time for us to have a reasonable opportunity to prepare our testimony for filing by November 22nd. We believe that the Complainants should not be allowed to gain an advantage in this litigation by refusing to respond to discovery responses. For these reasons, we request that you immediately suspend all testimony deadlines, with a revised schedule to be determined at the hearing next week that is tied to complainants' compliance with your rulings on the pending discovery disputes.

Thank you for your consideration of these concerns and we look forward to appearing before you next week

Yours truly,

Frank R. Ellerbe, III

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Enclosures

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